



CHICAGO BULL

VOLUME 1, EDITION 42

HELOC PAYOFFS

Chicago Title is experiencing a number of claims wherein a Homeowner's Equity Line of Credit ("HELOC") is "paid off" at closing, only to find the borrower under the HELOC instrument (whether the seller or the refiner of the "first" mortgage in the insured transaction) continued to make draws on the credit line post-closing. The reason for this problem is obvious: the HELOC is not properly terminated (often referred to as "frozen") and canceled or satisfied of record. Preventing the problem can be difficult. The following discusses the proper procedure for "freezing" a HELOC loan and cancelling the deed of trust under North Carolina law.

1. Know the Deed of Trust Requirements – The HELOC deed of trust should be carefully read to ascertain any special lender requirements for the freeze of the loan, calculation of the full and final payoff, and cancellation or satisfaction of record of the deed of trust lien. All requirements should be met.
2. Freeze the Account – NCGS 45-81(c) requires the outstanding debt be reduced to zero and a specific "freeze" request signed by the borrowers, as follows:

At any time when the balance of all outstanding sums secured by a mortgage or deed of trust pursuant to the provisions of this Article is zero, the lender shall, *upon the request of the borrower*, make written entry upon the security instrument showing payment and satisfaction of the instrument; provided, however, that such security instrument shall remain in full force and effect for the term set forth therein absent the *borrower's* request for such written entry. *[emphasis added]*

Whenever possible, the account should be "frozen" prior to closing when requesting the payoff letter. Sample "freeze" language is attached (with borrowers' signatures required). If the account cannot be frozen prior to closing, then the payoff must be accompanied by a "freeze" request executed by the borrowers.

3. Confirm at Closing – At closing, the attorney should request verification that all checks have cleared and should require that all extra checks and any cards be delivered and destroyed, preferably in the attorney's presence.
4. Deliver the Payoff Letter – The payoff letter must clearly provide that the equity line is to be frozen and the deed of trust canceled of record. Again, if the account cannot be frozen prior to closing, then the payoff must be accompanied by a "freeze" request executed by the borrowers. Sample language is attached.
5. Cancel the Deed of Trust – Follow up after closing to assure that the lender complies with the payoff letter and that the deed of trust is canceled of record.

Suggested payoff letter provisions are as follows:

Borrower's Request to Freeze Account at Issuance of Payoff Letter:

“In the event this loan is secured by a Mortgage [Deed of Trust] allowing for advances of a credit line, please be advised that this letter authorizes and directs you to freeze the referenced credit line upon issuance of your payoff [demand]. If you require further authorization, please contact the undersigned attorney immediately. **Payment pursuant to your payoff (demand) will eliminate any security interest you have in the property in question.** In order to avoid unsecured additional advances the account must be frozen upon issuance of your payoff [demand]. If you make any additional advances they will not be secured by the subject property. We will be completing an escrow/closing transaction involving a new owner or lender in reliance on the release of your security interest in the property. Upon payment you will be obligated to issue a release of the Deed of Trust securing the line of credit.”

Borrower's Request for Cancellation of Deed of Trust:

Pursuant to Section 45-81(c) of the North Carolina General Statutes, we the undersigned Owner(s) of the property described in the deed of trust securing the equity line loan above referenced, hereby request that, **IMMEDIATELY UPON RECEIPT OF PAYMENT TENDERED BELOW, YOU SHOULD CLOSE THIS ACCOUNT AND HONOR NO FURTHER ADVANCES.** We have not written further checks, drafts or draws from the equity line account and will not do so in the future. We hereby agree to indemnify and hold harmless your bank, the undersigned closing attorney, any new purchaser of the property, any new lender accepting the property as security for their loan and any title insurer providing coverage on the basis of this payoff and intended cancellation of said lien, including but not limited to any loss as a result of this equity line account being used subsequent to the date of this notice and/or for checks/drafts being honored subsequent to the date upon which I/we state the account was last used by me/us.

(Obligor / Owner of Property)
(Obligor / Owner of Property)

Attorney's specific request regarding equity line:

THIS PAYMENT IS NOT INTENDED AS ONLY A PAYDOWN OF THIS ACCOUNT. THE ACCOUNT IS TO BE CLOSED. No more checks or drafts should be honored. **HOWEVER, IF THIS PAYMENT IS INSUFFICIENT TO PAYOFF THE ACCOUNT, THIS SHOULD BE APPLIED IMMEDIATELY AND THE UNDERSIGNED NOTIFIED OF ANY SHORTAGE.** Please **IMMEDIATELY** acknowledge receipt of payment and *either* your acceptance as satisfaction in full *or* notice of amount of any shortage, as the case may be, by returning the enclosed copy of this letter in the envelope provided for your convenience, subject to the above check being honored and clearing our firm's trust account.